

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

United States of America, )  
 ) File No. CR-09-172  
 ) (MJD/SRN)  
 Plaintiff, )  
 )  
 vs. ) Minneapolis, Minnesota  
 ) July 6, 2010  
 Annie Huyen Vu, ) 9:10 a.m.  
 )  
 Defendant. )  
 )

BEFORE THE HONORABLE MICHAEL J. DAVIS  
UNITED STATES DISTRICT COURT JUDGE

**(SENTENCING)**

## APPEARANCES

For the Plaintiff: U.S. Attorney's Office  
LEEANN K. BELL, AUSA  
600 U.S. Courthouse  
300 South Fourth Street  
Minneapolis, Minnesota 55415

For the Defendant: Caplan Law Firm  
JOSEPH P. TAMBURINO, ESQ.  
Suite 525  
10 South Fifth Street  
Minneapolis, Minnesota 55402

Court Reporter: LORI A. SIMPSON, RMR-CRR  
1005 U.S. Courthouse  
300 South Fourth Street  
Minneapolis, Minnesota 55415

Proceedings recorded by mechanical stenography;  
transcript produced by computer.

**P R O C E E D I N G S**

**IN OPEN COURT**

THE COURT: Let's call this matter, please.

THE CLERK: The United States of America vs. Annie Huyen Vu, Criminal Case No. 09-CR-172. Counsel, will you please state your appearances for the record.

MS. BELL: LeeAnn Bell appearing on behalf of the United States. Good morning.

THE COURT: Good morning.

MR. TAMBURINO: Good morning, Your Honor. Joe Tamburino representing Ms. Vu, who is present.

THE COURT: Good morning. Step forward, please. All right. We continued this matter to see whether or not the defendant could qualify for a departure by giving substantial assistance [sic] to the Government.

What's the position of the Government in this matter?

MS. BELL: Your Honor, with respect to the safety valve, which we had continued this to try to accomplish, it is the position of the United States that Ms. Vu has not complied with the requirements of safety valve, specifically the requirement that she give a full and truthful statement of her activities and those that she was involved with.

Since the last hearing the United States offered to meet with Ms. Vu through her counsel and Mr. Tamburino

1 has additional information with respect to that, but it  
2 is the -- she has not met with the United States since then.  
3 It's my understanding that she had no desire to do so  
4 despite the rather clear consequences of making that choice.

5 THE COURT: Mr. Tamburino.

6 MR. TAMBURINO: Thank you, Your Honor. Just three  
7 items.

8 First, it's a very difficult position that we are  
9 in right now. I've spoken to Ms. Vu on a number of  
10 occasions. She's come to my office a number of times. I  
11 have shown her what other people have said in the case. I  
12 have also shown her Mr. Tran's most recent filings with the  
13 Court basically using some of what she has said in her  
14 second proffer interview for his own benefit. And  
15 unfortunately none of that has seemed to have worked.  
16 Ms. Vu has a very cooperative family. I've talked to them.  
17 But we're in the same position we were back in April. So  
18 it's a very difficult position that this presents to the  
19 Court.

20 Second, Your Honor, is our legal standing and that  
21 is we still are going to be requesting the safety valve  
22 under 3553(f) only because of the first proffer, Your Honor,  
23 where there was truthful information given. Though it is  
24 not the full song that should have been sung, there was at  
25 least a number of measures which were actually true.

1           And third, Your Honor, that I don't know what  
2           Ms. Vu is actually going to say, but I can tell you that her  
3           position remains the same. She obviously wants as least  
4           time as possible. I've explained to her how the Court in  
5           order to do that would have to hear from her, but I really  
6           don't know what she's going to say to the Court. We have  
7           discussed this as recently as last week and I still am not  
8           aware of what she would say.

9           That's all I have, Your Honor.

10          THE COURT: Let's go over everything. Counsel,  
11          have you had an opportunity to read the presentence  
12          investigation report in this matter?

13          MS. BELL: I have, Your Honor.

14          MR. TAMBURINO: Yes.

15          THE COURT: Any objections to the factual  
16          statements contained in the presentence investigation  
17          report?

18          MS. BELL: Nothing from the Government.

19          MR. TAMBURINO: Nothing.

20          THE COURT: The Court will adopt the factual  
21          statements contained in the presentence investigation report  
22          as its own.

23          Counsel, have you had an opportunity to review the  
24          advisory guideline calculations as prepared for the Court by  
25          the probation officer?

1 MS. BELL: I have.

2 MR. TAMBURINO: I too.

3 THE COURT: Any objections to the advisory  
4 guideline calculations?

5 MS. BELL: No, Your Honor.

6 MR. TAMBURINO: Nothing.

7 THE COURT: They are as follows: Total offense  
8 level of 23, criminal history points of 0, Category I,  
9 imprisonment range of 120 months, ten-year mandatory  
10 minimum, supervised release five years, fine range of  
11 \$10,000 to \$4 million, and a special assessment of \$100.

12 All right. The Defense has made a motion for the  
13 Court to grant safety valve based on an original proffer,  
14 which the Government opposes because she was not truthful.  
15 The Court will deny the defense motion for granting the  
16 defendant a safety valve departure based on her proffer to  
17 the Government in her first proffer.

18 Counsel, anything further you wish to say?

19 MR. TAMBURINO: Nothing else, Your Honor.

20 MS. BELL: I have nothing, Your Honor.

21 THE COURT: Ms. Vu, this is your opportunity to  
22 speak to me. This is your opportunity to say anything that  
23 you want to tell me or tell me anything that you want to  
24 tell me about yourself, about this offense, or anything else  
25 that you think I should know before I sentence you.

1 THE DEFENDANT: Your Honor, I had made a very bad  
2 choice and I have make a lot of mistake in my life. This is  
3 the most hard and the painful one that I made. I'm truly  
4 sorry for the harm and everything that I caused for other  
5 people, especially my children, my kids.

6 And I did cooperate what I knew and I'm really,  
7 really sorry for what I done and I believe in justice and I  
8 believe the court system, which you will decide and I will  
9 take consequences upon the court and upon your decision. To  
10 my family, I am very sorry.

11 Thank you.

12 THE COURT: Anything for the Government?

13 MS. BELL: Just very briefly, Your Honor, just so  
14 that there's something on the record.

15 Ms. Vu did sit down and initially provide a  
16 proffer to the United States and that's kind of the first  
17 proffer that we are talking about when we talk about the  
18 first proffer, and in that proffer she did give some initial  
19 information. I think parts of it are true.

20 Unfortunately what happened is we came back to sit  
21 down again because parts of what she said did not simply  
22 make sense and when we sat down again Ms. Vu started  
23 changing information, started saying things that she had  
24 said before weren't true and backtracking in part as a  
25 result of having spoken with -- I believe having spoken with

1 some of her co-conspirators.

2 And as a result when we went to try to get sort of  
3 the full story of the truthful information, things went  
4 downhill rather rapidly and that sort of got us to the  
5 position we were at the last time we were at the sentencing  
6 hearing, which was to continue it to try to give her an  
7 opportunity to sit down and actually tell all of the  
8 information that she had, which, as the Court knows, did not  
9 happen.

10 THE COURT: Okay. On November 3, 2009 the  
11 defendant pled guilty to a one-count indictment charging her  
12 with conspiracy to manufacture 1,000 or more marijuana  
13 plants, in violation of Title 21, United States Code,  
14 Sections 841(a)(1) and (b)(1)(A) and 846, a Class A felony.  
15 It is considered and adjudged that the defendant is guilty  
16 of that offense. The Court will sentence as follows:

17 This is a mandatory minimum sentence of 10 years  
18 in prison. The Court has given the defendant several  
19 opportunities to meet the safety valve requirements so the  
20 Court could sentence under the mandatory minimum. The  
21 defendant has not met those standards and will not qualify  
22 for the safety valve.

23 The record should reflect this is not an untypical  
24 type of case that the Court sees, but it's an unfortunate  
25 type of case where a woman is attached or in love or

1       whatever the feelings are there for another individual.

2               And in this case the individual that Annie Vu is  
3       attached to happens to be the ringleader of this conspiracy  
4       and it's unfortunate that she's put her love for him above  
5       her love for her child and in doing that she faces the  
6       consequences of going to prison.

7               The defendant is hereby sentenced to the care and  
8       custody of the Bureau of Prisons for a period of 120 months.

9               No fine is imposed.

10              Mandatory restitution in the amount of \$44,358.76  
11       is owed jointly and severally with Co-Defendants Johnny  
12       Tran, Kevin Phan, Hoa Tran, and Kenny Tran; in addition to  
13       at least \$23,121.63 which is owed jointly and severally with  
14       Johnny Tran, Minh Duong, Vinh Hoang, and Phung Hoang; as  
15       well as at least \$44,123.50 which is owed jointly and  
16       severally with Co-Defendants Phung Hoang and Vinh Hoang to  
17       Connexus Energy, Attention Accounting Department, 14601  
18       Ramsey Boulevard, Ramsey, Minnesota, 55303.

19              Over the period of incarceration the defendant  
20       shall make payments of either quarterly installments of a  
21       minimum of \$25 if working non-UNICOR or a minimum of  
22       50 percent of monthly earnings if working UNICOR.

23              The defendant should participate in the inmate  
24       financial responsibility program while incarcerated.

25              Payments of not less than \$50 per month are to be



1 made over a period of five years commencing 30 days after  
2 release from confinement. Payments are to be made payable  
3 to the Clerk, United States District Court, for disbursement  
4 to the victim. The interest requirement is waived in  
5 accordance with Title 18, United States Code, Section  
6 3612(f)(3).

7 The defendant is sentenced to a term of five years  
8 supervised release. The following mandatory conditions are  
9 applicable:

10 The defendant must report to the United States  
11 Probation and Pretrial Services Office in the district to  
12 which the defendant is released within 72 hours of release  
13 from custody of the Bureau of Prisons.

14 Next, the defendant shall not commit any crimes,  
15 federal, state, or local.

16 Next, the defendant shall not illegally possess a  
17 controlled substance. The defendant shall refrain from any  
18 unlawful use of a controlled substance. The defendant shall  
19 submit to one drug test within 15 days of release from  
20 imprisonment and at least two periodic drug tests thereafter  
21 as determined by the Court.

22 Next, the defendant shall not possess a firearm,  
23 ammunition, destructive device, or other dangerous weapon.

24 Next, the defendant shall cooperate in the  
25 collection of DNA as directed by the probation officer.

1           Next, if the judgment -- excuse me. As a  
2           condition of supervision the defendant must pay in  
3           accordance with the Schedule of Payments sheet of the  
4           judgment based on the amount of restitution that is involved  
5           in this matter.

6           Next, the defendant shall abide by the standard  
7           conditions of supervised release that have been adopted by  
8           the Court, including the following special conditions:

9           One, the defendant shall abstain from the use of  
10          alcohol and other intoxicants and not frequent  
11          establishments whose primary business is the sale of  
12          alcoholic beverages.

13          Next, the defendant shall participate in a program  
14          for substance abuse as approved by the probation officer.  
15          That program may include testing and inpatient or outpatient  
16          treatment, counseling, or support group. Further, the  
17          defendant shall contribute to the costs of such treatment as  
18          determined by the Probation Office Co-Payment Program, not  
19          to exceed the total cost of treatment.

20          Next, the defendant shall provide the probation  
21          officer access to any requested financial information,  
22          including credit reports, credit card bills, bank  
23          statements, and telephone bills.

24          Next, the defendant shall be prohibited from  
25          incurring new credit charges or opening additional lines of

1 credit without approval of the probation officer.

2 Next, if not employed at a regular lawful  
3 occupation as deemed appropriate by the probation officer,  
4 the defendant may be required to perform up to 20 hours of  
5 community service per week until employed. The defendant  
6 may also participate in training, counseling, daily job  
7 search, or other employment related activities as directed  
8 by the probation officer.

9 Finally, there's a \$100 special assessment payable  
10 to the Crime Victims Fund which is required to be paid  
11 immediately.

12 The defendant is subject to mandatory detention  
13 provisions under Title 18, United States Code, Section 3143,  
14 and she will be taken into custody immediately.

15 Ma'am, if you feel the Court has not followed the  
16 law in the imposition of your sentence, you have a right to  
17 appeal your sentence to the Eighth Circuit Court of Appeals  
18 which sits in St. Louis. You have 14 days from today's date  
19 to file that notice of appeal.

20 Mr. Tamburino will be your attorney of record on  
21 that appeal. If you do not wish to have him as your  
22 attorney, you can hire your own attorney or represent  
23 yourself. In any event, you have the right to -- you have  
24 to file your notice of appeal within 14 days of today's  
25 date.

1 Anything further for the Defense?

2 MR. TAMBURINO: Nothing else, Your Honor.

3 MS. BELL: No, Your Honor.

4 THE COURT: Just have a seat and the marshals will  
5 take you into custody.

6 (Court adjourned at 9:25 a.m.)

7 \* \* \*

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10 I, Lori A. Simpson, certify that the foregoing is a  
11 correct transcript from the record of proceedings in the  
12 above-entitled matter.

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14 Certified by: s/ Lori A. Simpson

15 Lori A. Simpson, RMR-CRR

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